

9-71.000 COPYRIGHT LAW

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This chapter contains an overview of the criminal copyright laws. The law of copyright is codified at Title 17 of the United States Code. The principal prohibitions relating to criminal copyright infringement are set forth at 17 U.S.C. § 506(a) and 18 U.S.C. § 2319. Titles 17 and 18 also contain a number of other provisions that make illegal certain practices which are inconsistent with Congress' copyright protection scheme. The Computer Crime and Intellectual Property Section of the Criminal Division has supervisory authority over offenses discussed in this chapter.

See the following sections of the Criminal Resource Manual for a discussion of various areas of copyright law:

Prosecution Policy Letter of October 11, 1994	Criminal Resource Manual at 1841
Reporting Requirements	Criminal Resource Manual at 1842
Assignment of Responsibilities	Criminal Resource Manual at 1843
Preemption of State Law	Criminal Resource Manual at 1844
Applicability of Civil Copyright Law	Criminal Resource Manual at 1845
Protection of Intellectual Property	Criminal Resource Manual at 1846
Criminal Copyright Infringement -- 17 U.S.C. § 506(a) and 18 U.S.C. § 2319	Criminal Resource Manual at 1847
Copyright Infringement -- First Element -- Existence of a Valid Copyright	Criminal Resource Manual at 1848
Copyright Infringement -- Second Element -- Infringement	Criminal Resource Manual at 1849
Copyright Infringement -- Third Element -- Willfulness	Criminal Resource Manual at 1850
Copyright Infringement -- Fourth Element -- Commercial Advantage or Private Financial Gain	Criminal Resource Manual at 1851
Copyright Infringement -- Penalties -- 17 U.S.C. § 506(a) and 18 U.S.C. § 2319	Criminal Resource Manual at 1852
Copyright Infringement -- Unauthorized Fixation of and Trafficking in Sound Recording and Music Videos	Criminal Resource Manual at 1853
Copyright Infringement -- First Sale Doctrine	Criminal Resource Manual at 1854
Protection of Copyright Notices -- 17 U.S.C. §§ 506(c) and 506(d)	Criminal Resource Manual at 1855

Copyrights -- False Representations -- 17 U.S.C. § 506(e)	Criminal Resource Manual at 1856
Trafficking in Counterfeit Labels -- 18 U.S.C. § 2318	Criminal Resource Manual at 1857
Interstate Transportation of Stolen Property -- 18 U.S.C. § 2314	Criminal Resource Manual at 1858
Other Criminal Statutes	Criminal Resource Manual at 1859
Copyright Infringement -- Statute of Limitations	Criminal Resource Manual at 1860

9-71.010 Prosecution Policy

In determining whether to proceed with a criminal copyright prosecution, the United States Attorneys should evaluate several important considerations. First, federal law preempts much of the copyright field. *See* 17 U.S.C. § 301. With federal preemption of copyright protection, prosecutors must now recognize that individuals harmed by copyright violations are unlikely to have recourse to state criminal laws. In most instances, criminal prosecution of copyright offenders is possible only within the federal system. United States Attorneys should keep this factor in mind when considering whether to decline prosecution in a copyright case. Thus, a decision by the United States Attorney to decline prosecution in a copyright matter may foreclose all avenues of criminal prosecution. This consideration suggests that all criminal copyright matters should receive careful attention. *See* the Criminal Resource Manual at 1844 for a more in depth discussion of preemption.

Second, the criminal penalties of 17 U.S.C. § 506(a) for willful infringements undertaken for purposes of commercial advantage or private financial gain, form an important part of the copyright enforcement scheme. An increased need for deterrence in this area is reflected in the 1982 enactment of felony penalties for piracy and counterfeiting of sound recordings and audiovisual works. *See* 18 U.S.C. § 2319. Consequently all meritorious cases which fall within the parameters of these felony statutes should receive serious consideration.

Once the technical elements of the offense appear to be satisfied, the United States Attorney is, of course, free to consider additional equitable factors in determining whether to pursue a criminal copyright prosecution.

A. The seriousness of the offense. Felony penalties for first offenses begin at seven copies for audiovisual works, and one hundred copies for sound recordings. In this context, prosecution of felony offenses of comparatively moderate scale may have substantial deterrent impact. It should also be kept in mind that lesser volumes of counterfeiting or pirating activity may suitably lend themselves to the plea bargaining process in particular cases since 18 U.S.C. § 2319(b)(3) provides misdemeanor penalties upon conviction for the first offense. A misdemeanor plea also serves a deterrent function because of the prospect of felony charges for a future offense. Prosecutions focused on the most serious offenders should, of course, be given top priority. Thus, appropriate factors should include the nature and volume of the infringing activity or a prior history of similar conduct by the suspect. Individuals who have continued to infringe for financial gain after civil remedies have been successfully invoked should receive particular attention.

B. The likelihood of successful prosecution. An unsuccessful prosecution may be counterproductive not only in terms of allocation of resources, but also with respect to deterrence. The presence of legal or evidentiary problems should be carefully evaluated, particularly with regard to criminal intent. A suspect actually involved in the manufacture and distribution of infringing works would be a promising candidate for criminal prosecution, since the possession and use of elaborate duplicating equipment and accessories will normally supply effective evidence of criminal intent. As to others in the chain of distribution, different proof of criminal intent is usually required to preclude the successful assertion of defenses.

A number of special charging considerations may become pertinent to cases involving violations of intellectual property rights in electronic environments (such as computer networks), or cases arising in business environments that involve employer-employee relationships. *See* the Criminal Resource Manual at 1841 (DOJ Letter of October 11, 1994 regarding Criminal Prosecution of Copyright Infringement). Special considerations

may also arise as the result of statutory changes of consequence that may occur with respect to underlying copyright laws. If assistance or legal advice is needed (or if resource limitations do not permit the handling of a particular case which otherwise merits prosecutive attention), prosecutors are encouraged to contact the Computer Crime and Intellectual Property Section.

9-71.015 Reporting Requirements

The Anticounterfeiting Consumer Protection Act of 1996, Pub. L. No. 104-153, 110 Stat. 1386 (1996), requires the Attorney General to provide Congress with detailed information concerning investigations and prosecutions under the criminal intellectual property statutes, 18 U.S.C. §§ 2318, 2319, 2319A, and 2320. *See* 18 U.S.C. § 2320(e). The Department is presently developing mechanisms to aid in addressing these requirements. For more information see the Criminal Resource Manual at 1842 or contact the Criminal Division's Computer Crime and Intellectual Property Section.